

No.

In the Supreme Court of the United States

CITY OF BOSSIER CITY, PETITIONER,

v.

RICHARD HERSHEY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *City of Canton v. Harris*, this Court held that municipalities may be held liable under 42 U.S.C. § 1983 for a failure to train their employees only “where the failure to train amounts to deliberate indifference” to constitutional rights. 489 U.S. 378, 388 (1989). More recently, this Court left open a narrow possibility that a plaintiff might be able to demonstrate such deliberate indifference based on a single unconstitutional incident. *Connick v. Thompson*, 563 U.S. 51 (2011). But the Court emphasized that for such single-incident liability, the unconstitutional consequences of the failure to train must be “patently obvious.” *Id.* at 64.

The questions presented are:

1. Whether a plaintiff can plead single-incident municipal liability without alleging a violation of a clearly established constitutional right.
2. Whether a plaintiff can plead single-incident municipal liability without alleging a complete lack of training on the constitutional right in question.

PARTIES TO THE PROCEEDINGS

Petitioner City of Bossier City was a defendant in the district court and an appellee in the court of appeals. Respondent Richard Hershey was the plaintiff in the district court and the appellant in the court of appeals. Respondents Bobby Gilbert, Daniel Stoll, David Smith, Tyshon Harvey, and Eugene Tucker were defendants in the district court and appellees in the court of appeals.

RULE 29.6 DISCLOSURE STATEMENT

No party to the proceedings is a nongovernmental corporation.

RELATED PROCEEDINGS

United States District Court (W.D. La.):

Richard Hershey v. City of Bossier City,
No. 5:21-cv-00460 (Sept. 24, 2021)

United States Court of Appeals (5th Cir.):

Richard Hershey v. City of Bossier City,
No. 21-30754 (Oct. 7, 2025; rehearing en banc denied
Dec. 19, 2025; panel rehearing denied Jan. 13, 2026)

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INTRODUCTION

Nearly 50 years ago, in *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), this Court held that Section 1983 does not impose vicarious liability on local governments for constitutional torts committed by their employees. Since *Monell*, this Court's municipal-liability cases have consistently reaffirmed that principle. Local governments may be held liable for their *own* policies and customs; they may not be held liable for employees' errors.

Plaintiffs can show a municipal policy or custom in two ways. First, and most obviously, a local government may have an actual, on-the-books unconstitutional policy. Second, and more rarely, a government

may have a de facto policy of inaction. That is, a local government may be liable for injuries caused by the failure to properly train its employees if the government is *deliberately indifferent* to the high likelihood that its failure will lead employees to violate the rights of others. To fit within this deliberate-indifference, failure-to-train category, a plaintiff must demonstrate a high degree of governmental culpability. This Court has emphasized that the high bar is necessary to ensure that local governments are held responsible only for their own deliberate choices, not the choices of employees. *City of Canton v. Harris*, 489 U.S. 378, 388-392 (1989).

In most cases, meeting that stringent standard requires a plaintiff to show a pattern of constitutional violations. The reason is straightforward: if there have been repeated similar constitutional violations, then policymakers are on notice that their training is deficient. And if they are on notice and still choose to do nothing, then that choice may amount to deliberate indifference. In other words, the failure to fix the problem can then be regarded as a policy for which the municipality may be held accountable. *See Board of County Commissioners v. Brown*, 520 U.S. 397, 407-409 (1997); *Connick v. Thompson*, 563 U.S. 51, 61-62 (2011).

In *Canton*, this Court introduced one complication that has vexed lower courts since. The Court floated the possibility of a deliberate-indifference, failure-to-train claim arising from a single unconstitutional incident. In those circumstances, policymakers have no notice from a previous pattern of constitutional violations. But the Court hypothesized that there *might* be

a case where policymakers were deliberately indifferent, if the risk of constitutional violations was *so* obvious, the danger of inaction was *so* clear, and the failure to train was *so* complete. The Court gave—and has since reiterated—just one example of such a situation: a municipality’s decision to arm law-enforcement officers without providing any training on the constitutional limits on using deadly force. See *Canton*, 489 U.S. at 390 n.10; *Brown*, 520 U.S. at 409; *Connick*, 563 U.S. at 63-64, 66-67.

In the 15 years since this Court last endorsed that hypothetical, lower courts have faced many single-incident suits. This is one. Respondent Richard Hershey is a professional pamphleteer and serial litigant who sued petitioner Bossier City. Hershey was handing out pamphlets on the grounds of a local arena that was publicly owned, privately operated, and at the relevant time being used for a ticketed event. Several police officers and private security guards told Hershey to leave, which he did without incident. Hershey then sued for money damages under Section 1983, alleging that the arena grounds were a public forum, that the officers had violated his First Amendment rights, and that Bossier City was liable under *Monell* for a failure to train its officers on the First Amendment’s application to the arena grounds.

These allegations against the City come nowhere close to the armed-and-untrained-officer hypothetical from *Canton*. There was no obvious constitutional violation here, let alone such a foreseeable and dangerous one that Bossier City policymakers might be said to have adopted a policy of “deliberate indifference.” The complaint should have been promptly dismissed, and it was by the district court.

Yet a divided Fifth Circuit panel found a viable *Monell* claim, and the full court split 10-7 in denying further review. The panel majority expanded *Monell* liability in two critical ways. First, it allowed a *Monell* claim based on a constitutional right that, for purposes of the individual officers' immunity, the panel deemed not clearly established. Second, it blessed failure-to-train allegations that were tailored to the precise facts here—that is, a failure to train on the application of First Amendment free-speech principles to this specific slice of public-private property. The decision thus turns *Canton*'s hypothesized single-incident claim into a vehicle for the one thing *Monell* definitively rejects: vicarious liability for an employee's torts. As Judge Oldham warned in his dissent from denial of rehearing en banc, a plaintiff now “need only allege that officers were not trained [on] the specific situation at hand and, *voilà*, the plaintiff has a *Monell* claim.” App., *infra*, 31a.

The decision below opens up a circuit split with the Second, Sixth, and Eighth Circuits, all of which have held that a *Monell* failure-to-train claim requires a clearly established constitutional right. It also creates substantial new legal exposure for thousands of cash-strapped municipalities, which now face *Monell* lawsuits for “policies” of inaction that no reasonable person would ever describe that way. It is no wonder that this decision is already Section 1983 plaintiffs' favorite new citation in the Fifth Circuit.

Over the last three decades, this Court has raised questions for lower courts and municipalities about the near-oxymoron of single-incident policies. Especially after the decision below, courts and municipalities need answers. The Court should grant the petition.

OPINIONS BELOW

The order denying rehearing en banc and accompanying opinions (App., *infra*, 1a-37a) are reported at 165 F.4th 292. The order denying panel rehearing (App., *infra*, 145a-146a) is reported at 163 F.4th 976. The opinion of the court of appeals (App., *infra*, 38a-95a) is reported at 156 F.4th 555. The judgment of the district court (App., *infra*, 96a) is not published in the Federal Supplement but is available at 2021 WL 4395043. The report and recommendation of the magistrate judge (App., *infra*, 97a-122a) is not published in the Federal Supplement but is available at 2021 WL 4395056.

JURISDICTION

The court of appeals denied the petition for rehearing en banc on December 18, 2025, App., *infra*, 1a, and sua sponte denied panel rehearing on January 13, 2026, *id.* at 145a. On March 12, 2026, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including May 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Title 42, Section 1983, of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress

STATEMENT OF THE CASE

A. Legal Background

Section 1983 imposes liability on any “person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983.

In *Monell*, this Court held that local governments may be held liable for constitutional torts under Section 1983. 436 U.S. at 690. *Monell*’s holding came with an important caveat: “a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents,” but only for the “execution of [its] policy or custom.” *Id.* at 694. Put differently, the Court rejected “a *respondeat superior* theory” of municipal liability. *Id.* at 693. Instead, the Court stressed that the “government’s policy or custom” needed to be “the moving force of the constitutional violation.” *Id.* at 694. In the nearly 50 years since *Monell*, this Court has emphasized that municipalities are responsible exclusively for “their *own* illegal acts,” and not their failure “to control the conduct of *others*.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986) (emphasis in original).

Section 1983 plaintiffs have often tried to fit their claims within *Monell* by asserting that a defendant municipality’s “policy or custom” is a failure to train its employees. In response, this Court has explained that local governments may be held liable on such a theory only “where the failure to train amounts to deliberate

indifference to the rights of persons with whom [the government employees] come into contact.” *Canton*, 489 U.S. at 388. Section 1983 liability requires “a deliberate choice to follow a course of action . . . from among various alternatives by city policymakers.” *Id.* at 389 (quotation omitted). Only then does the failure to act rise to the level of an actionable policy or custom. *Ibid.* Practically speaking, “the need for more or different training [must be] so obvious, and the inadequacy so likely to result in the violation of constitutional rights,” that policymakers can be said to have *chosen* to violate the right in question. *Id.* at 390.

In a footnote in *Canton*, the Court gave two examples of circumstances that might meet this exacting standard. First, the Court explained that employees may “so often violate constitutional rights that the need for further training must have been plainly obvious to city policymakers,” such that a decision not to provide that training demonstrates deliberate indifference. 489 U.S. at 390 n.10. Second, the Court hypothesized that a municipality’s decision to arm its police officers without providing them any training “in the constitutional limitations on the use of deadly force” might constitute deliberate indifference, because of the virtual certainty that officers will confront a situation in which they will be called upon to use such force. *Ibid.* In either scenario, “the facts available to city policymakers put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens.” *Id.* at 396 (O’Connor, J., concurring in part and dissenting in part).

The Court later reaffirmed that deliberate indifference under Section 1983 “is a stringent standard of

fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Brown*, 520 U.S. at 410. Thus, meeting that standard usually requires a pattern of unconstitutional conduct. *See id.* at 407-409. But the Court observed that *Canton* “did not foreclose the possibility that evidence of a single violation of federal rights” by a local government employee could give rise to Section 1983 liability in “narrow” circumstances. *Id.* at 409. For example, *Canton*’s extreme use-of-force hypothetical “could” potentially meet the standard. *Ibid.*

This Court most recently addressed failure-to-train liability in *Connick*. There, the Court reaffirmed that a plaintiff must show a “policy of inaction in light of notice that [the current training] program,” or lack thereof, “will cause constitutional violations.” 563 U.S. at 61 (internal quotation marks and citation omitted). The Court emphasized that a “pattern of similar constitutional violations by untrained employees is ‘ordinarily necessary’ to demonstrate deliberate indifference.” *Id.* at 62 (citation omitted). *Connick* stopped short of closing the door on “*Canton*’s hypothesized single-incident liability,” again leaving open the possibility that, in truly extreme cases, “the unconstitutional consequences of failing to train could be so patently obvious that a [municipality] could be liable under § 1983 without proof of a pre-existing pattern of violations.” *Id.* at 64. The Court stressed that this “narrow” exception could be available only in the “rare” case where the complete absence of training leaves a municipal employee with “no knowledge at all” about the constitutional right and “the utter lack of an ability to cope with constitutional situations” she is virtually certain to encounter. *Id.* at 63-64, 66-67.

B. Factual Background

Richard Hershey is a professional pamphleteer paid by “various nonprofit organizations” to approach members of the public and distribute leaflets. App., *infra*, 27a, 127a. Hershey is also a serial plaintiff who has filed more than a dozen federal civil-rights lawsuits against state and local governments and officials across six States since 2010. *See id.* at 67a-68a.

In February 2020, Hershey entered the grounds of the CenturyLink Center in Bossier City, Louisiana to hand out literature about Christian vegetarianism to attendees of the “Winter Jam” Christian rock concert being held there. App., *infra*, 64a, 127a-128a. The CenturyLink Center is a multi-purpose arena owned by Bossier City and operated by a private company. *Id.* at 63a. The Center’s grounds include several grassy areas and parking lots crisscrossed by internal sidewalks and driveways. *See id.* at 127a-128a. The Center’s operator “lease[s] both the interior space and outdoor areas of the Center for [private] events,” such as the rock concert that prompted Hershey’s visit. *Id.* at 63a. The concert was a paid, ticketed event; Hershey did not have a ticket. *See id.* at 61a, 63a.

Two Bossier City police officers, accompanied by three private security guards, approached Hershey as he stood on one of the sidewalks on the Center grounds handing out leaflets to concertgoers. App., *infra*, 64a, 128a-129a. One of the officers informed Hershey that the CenturyLink Center was private property and told him that he “had to leave” or “be arrested.” *Id.* at 63a-64a, 129a. Hershey complied and headed for the exit. *Id.* at 64a, 130a. As he was leaving, he asked the officers about another leafleteer who had been “handing out

cards for a radio station” on Center grounds that day. *Id.* at 64a, 130a. The officer told Hershey that he needed the Center’s permission to hand out leaflets and had to submit his literature in advance for approval. *Ibid.* When Hershey asked whether the other leafleteer had permission to hand out his literature, one of the officers answered that he did not know. *Ibid.* Hershey left the Center grounds without incident or arrest. *Ibid.*

The CenturyLink Center logged a single “incident report” that day involving pamphleteers. According to the report, the Center’s security guards observed “two individuals handing out pamphlets.” App., *infra*, 65a. When the pamphleteers “became argumentative” with concertgoers, the security guards “called Bossier City police for assistance.” *Id.* at 66a. The pamphleteers ultimately left the property. *Ibid.* The incident report does not name Hershey. *Id.* at 65a-66a.

C. Proceedings Below

1. Hershey sued the officers, security guards, and Bossier City under Section 1983, alleging violations of his First Amendment rights. His complaint described the CenturyLink Center as “a public park” and alleged that the Center’s outdoor spaces were a “traditional public forum,” or at least a “designated public forum,” for First Amendment purposes. App., *infra*, 127a, 131a. Hershey thus alleged that he “had a right . . . to distribute literature” outside the Center. *Id.* at 131a. Hershey further alleged that the officers and security guards had treated him less favorably than the radio-station leafleteer, but he did not allege that they were aware that his pamphlets were about vegetarianism. *Id.* at 130a; *see id.* at 26a-27a.

As to Bossier City, Hershey alleged that the City had failed to adequately train the officers and security guards in two related ways. App., *infra*, 136a-137a. First, he alleged that the City did not train the officers or security guards “that the [CenturyLink Center] and the park surrounding it are public property and, therefore, the citizens using that property are entitled [to] their constitutional rights guaranteed by the First Amendment.” *Id.* at 136a. Second, he alleged that the City did not provide training about “how to take into account the First Amendment rights of citizens on the [Center’s] property by enforcing only reasonable time place and manner restrictions . . . as opposed to blanket denials of access to the property.” *Ibid.* Hershey did not allege any pattern of constitutional violations under similar circumstances. Rather, he contended that “the risk of constitutional harm was so obvious [from] the failure to train [on] the delineation between public and private property” with respect to the CenturyLink Center that Bossier City had effectively adopted an “unconstitutional custom” of violating visitors’ First Amendment rights on Center grounds. *Ibid.*

Separately, Hershey alleged that the City had a policy of giving police officers and the Center’s private operator “unfettered discretion to arbitrarily and capriciously remove individuals . . . exercising their First Amendment rights” from the Center grounds. App., *infra*, 127a.

2. All defendants moved to dismiss the complaint for failure to state a claim. App., *infra*, 97a. The police officers also invoked qualified immunity. *Id.* at 107a. The magistrate judge—whose opinion the district court adopted in full, *id.* at 96a—recommended dismissal of the claims against the officers based on qualified

immunity, of the claims against the City because Hershey failed to state a viable *Monell* claim, *id.* at 120a, and of the claims against the private security guards because they were not state actors, *see Hershey v. City of Bossier City*, 2021 WL 5366900, at *2-5 (W.D. La. Nov. 1, 2021).

As to the officers, the magistrate judge concluded that no “controlling authority . . . made clear” that the officers’ “prohibition of distributing leaflets on the sidewalks outside the [CenturyLink Center] during a concert event was unconstitutional.” App., *infra*, 111a. Nobody disputed that Hershey would have been entitled to pamphlet on a standard public sidewalk. But it was unclear how to treat the Center’s grounds, given their public-private nature. The magistrate judge noted the divided authority on how to classify similar areas outside public arenas during private events: several courts had deemed such areas “either nonpublic or limited forums,” whereas others had said the opposite. *Id.* at 103a-104a.¹ Because of that confusion, and because Hershey failed to “point to a single decision from any court” finding a First Amendment violation on “similar arena premises,” the magistrate judge concluded that the officers “[we]re entitled to dismissal based on qualified immunity.” *Id.* at 109a-111a.

¹ Indeed, at least one precedent unfavorable to Hershey was of his own making. Just a year earlier, a district court in Arkansas had granted summary judgment against Hershey on virtually identical First Amendment claims arising from his attempts to hand out leaflets on the grounds of the Verizon Center in North Little Rock during another stop of the same “Winter Jam” concert series. App., *infra*, 105a; *see Hershey v. Multi-Purpose Civic Ctr. Facility Bd.*, 2020 WL 4741900 (E.D. Ark. Aug. 14, 2020).

The magistrate judge also recommended that the district court dismiss the *Monell* claims against the City. The magistrate judge concluded that Hershey's single-incident failure-to-train claim failed because Hershey did "not allege that there was no training whatsoever with respect to persons passing out leaflets at the [Center] or similar public areas," but only "that the City did not provide 'adequate' training" on the free-speech rights of Center patrons. App., *infra*, 115a (quoting Am. Compl. ¶ 67, *id.* at 136a). "If the allegations in this case were enough," the magistrate judge observed, "it would risk permitting the single-incident exception to 'swallow the rule that forbids mere respondeat superior liability.'" *Ibid.* (citation omitted). The magistrate judge also dismissed Hershey's "unfettered discretion" theory as insufficiently pleaded. *Id.* at 119a-120a.

3. Hershey appealed. A splintered panel affirmed 2-1 the district court's grant of qualified immunity to the officers and dismissal of the claims against the security guards but, by a different 2-1 majority, reversed the district court's dismissal of Hershey's *Monell* claim against Bossier City. App., *infra*, 38a-39a (per curiam).

a. Judge Ho (the only judge in the majority on both issues) voted to affirm the district court's decision as to the officers and security guards, and reverse as to the City. App., *infra*, 38a-39a.

Despite reservations, Judge Ho concluded that the district court was required to grant qualified immunity to the officers because "Hershey [was] unable to identify favorable precedent with the 'materially identical facts'" clearly establishing his right to leaflet on CenturyLink Center grounds. App., *infra*, 45a (Ho, J.,

concurring). Indeed, the Fifth Circuit had recently rejected a First Amendment challenge to a municipal ordinance that prohibited leafleting “on a sidewalk outside a public amphitheater.” *Id.* at 46a (citing *Siders v. City of Brandon*, 123 F.4th 293 (2024)). Given *Siders*, it was “difficult to see how Hershey” could have “stated a ‘clearly established’ violation in our circuit.” *Id.* at 47a.

Turning to Hershey’s *Monell* claim, Judge Ho concluded that Hershey had sufficiently pleaded deliberate indifference. Judge Ho relied on the complaint’s allegations that “Bossier City did not train its police officers and private security personnel that the park surrounding the [CenturyLink Center] is public property, or that citizens are entitled to exercise their First Amendment rights there.” App., *infra*, 48a. Judge Ho interpreted Hershey’s complaint to allege “that the City provided ‘no training whatsoever’ regarding the application of the First Amendment to the park,” which he believed was sufficient to state a single-incident claim. *Id.* at 48a-49a (quoting *Garza v. City of Donna*, 922 F.3d 626, 638 (5th Cir. 2019)).

b. Judge Dennis would have reversed the district court across the board. App., *infra*, 49a (Dennis, J., concurring in part and dissenting in part). Judge Dennis believed that “[a]ny reasonable officer would have understood” that limits on pamphleteering at the CenturyLink Center violated the First Amendment. *Id.* at 57a. He also understood Hershey to have alleged for his *Monell* claim that the City had “failed to train its police officers and private security personnel of citizens’ First Amendment rights on public property” and, indeed, had “no officer training whatsoever on the First Amendment.” *Id.* at 52a-53a. In support, Judge

Dennis cited paragraph 55 of Hershey’s amended complaint, *id.* at 53a, which alleged that “the City did not have any . . . viewpoint neutral policy regulating speech activities protected by the First Amendment . . . and restricting access to the *CenturyLink Center public sidewalks*,” *id.* at 132a (emphasis added). Judge Dennis concluded that this allegation could support a plausible claim that the City acted with deliberate indifference. *Id.* at 53a.

c. Judge Richman, in contrast, would have affirmed the district court’s dismissal of all of Hershey’s claims. App., *infra*, 60a (Richman, J., concurring in part and dissenting in part).

Starting with the officers, Judge Richman agreed that Hershey’s failure to identify any factually similar decision foreclosed his claim, given the “nuance[d]” nature of the First Amendment question. App., *infra*, at 68a. Judge Richman emphasized that “public property may change its character for First Amendment forum analysis based on temporary uses,” which made it particularly difficult to clearly establish law in this area. *Id.* at 71a. She observed that even officers thoroughly “trained in First Amendment law” might have difficulty “know[ing] whether a given area near an arena being used in a particular way at a given time is or is not a public forum given the uncertainties of the law in this area.” *Id.* at 70a. So Judge Richman agreed with Judge Ho that qualified immunity applied here. *See id.* at 73a-78a.

As for Hershey’s single-incident *Monell* claim, Judge Richman warned that allowing such a claim to move forward would “substantially erode and trivialize” the deliberate-indifference standard that this Court articulated in *Canton*. App., *infra*, 80a.

Judge Richman noted that the alleged training deficiency here was a far cry from the extreme single-incident hypothetical in *Canton*. *Id.* at 84a. As she explained, “[i]t is not highly predictable that law enforcement officers would have recurring encounters with individuals paid to distribute literature outside a large, pay-to-attend event,” and thus would need to confront the First Amendment issues on which Hershey alleges the City failed to provide adequate training. *Id.* at 83a-84a.

Judge Richman also criticized the tailored nature of Hershey’s failure-to-train allegations. She warned that “many plaintiffs would be able to granulate allegations so finely that they arrive at a ‘complete failure to train’ as to the relevant conduct.” App., *infra*, 84a. After all, in “virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city could have done to prevent the unfortunate incident.” *Ibid.* (quoting *Canton*, 489 U.S. at 392). Endorsing Hershey’s specific failure-to-train allegations would thus turn a narrow exception for the most extreme cases into a virtual “strict liability” regime, contrary to *Monell*. *Id.* at 89a.

4. By a 10-7 vote, the Fifth Circuit denied the City’s petition for rehearing en banc. App., *infra*, 1a-2a. Judge Ho concurred in the denial of rehearing, writing to air his disagreements with the Fifth Circuit’s First Amendment and qualified-immunity law. *Id.* at 2a-26a. Judge Oldham, writing for himself and six other judges, dissented from the panel’s resuscitation of Hershey’s *Monell* claim. *Id.* at 26a-37a.

Judge Oldham predicted that the panel majority’s approach to municipal liability would “turn the world

upside down.” App., *infra*, 28a. He explained that this Court had limited single-incident *Monell* liability to circumstances where “a municipality ‘failed to train its employees concerning a clear constitutional duty implicated in recurrent situations that a particular employee is certain to face.’” *Ibid.* (brackets and citation omitted). Under the panel’s approach, in contrast, “plaintiffs need only allege that defendants lacked training to handle plaintiff’s case—even if the ex ante risk of a constitutional violation was infinitesimal.” *Id.* at 29a. Put otherwise, “[p]laintiffs need only allege that officers were not trained [in] the specific situation at hand and, *voilà*, the plaintiff has a *Monell* claim.” *Id.* at 30a.

Judge Oldham also criticized the tension between the panel majority’s qualified-immunity holding and its expansive understanding of *Monell*. He noted that courts “routinely dismiss *Monell* claims against political subdivisions where the plaintiff fails to establish a § 1983 claim against an individual officer.” App., *infra*, 30a. Because of these twin errors, he predicted that the panel’s “failure-to-train theory . . . [will] saddle political subdivisions in every § 1983 case” with burdensome litigation. *Id.* at 36a-37a. As a result, “lawsuits will proliferate, discovery costs will soar, and municipalities will be forced to re-allocate precious time and resources.” *Id.* at 30a-31a.

5. A few weeks after the full Fifth Circuit denied rehearing en banc, the panel declined to rehear the case. App., *infra*, 145a. This time, Judge Ho dissented. He would have allowed Hershey to present new “qualified immunity issues that [Judge Oldham’s en banc dissent] purportedly welcomed him to present.” *Id.* at 146a. Hershey then moved for leave to file an out-of-

time petition for rehearing en banc. C.A. Doc. 121 (Jan. 16, 2026). The court denied that motion. C.A. Doc. 136-2 (Feb. 5, 2026).

REASONS FOR GRANTING THE PETITION

The decision below is egregiously wrong. For more than 35 years, this Court has cautioned that single-incident *Monell* claims, to the extent they are cognizable at all, represent a narrow exception to the usual rule that plaintiffs must show a pattern of prior unconstitutional conduct. The panel turned that narrow exception into a simple pleading exercise, where a plaintiff need not invoke a clear constitutional violation and can always assert a failure to train on the precise factual scenario at hand. Neither move is consistent with this Court's decisions. Together, they wipe out *Monell*'s rejection of vicarious liability for municipalities under Section 1983.

That error warrants immediate review. The Fifth Circuit created a circuit split with at least three other courts of appeals that have rejected *Monell* liability for anything but clear constitutional violations. After a 10-7 en banc vote, only this Court can correct the Fifth Circuit's error. In the meantime, cash-strapped municipalities in the Fifth Circuit will face a drastic increase in *Monell* liability, which is already well underway. This case is an ideal vehicle for setting things right.

I. THE DECISION BELOW IS WRONG.

The decision below drastically expands single-incident *Monell* liability beyond the narrow—and, indeed, hypothetical—exception that this Court has held open. The decision rests on two mutually reinforcing errors.

First, the panel majority allowed Hershey's claim against the City to proceed even though it concluded that no law clearly established a constitutional violation here. Imposing municipal liability without a clear constitutional right contradicts this Court's instruction that, in a single-incident case, "the unconstitutional consequences of failing to train [must] be so patently obvious" that City policymakers know to a virtual certainty that untrained employees will violate citizens' rights. *Connick*, 563 U.S. at 63-64. Second, the panel majority allowed Hershey to plead a failure to train on the application of the First Amendment to the narrow circumstances here. But that holding contravenes this Court's express warning that a single-incident plaintiff may not plead that a municipality's employees "were not trained about . . . the specific scenario related to the violation in his case." *Id.* at 67.

A. Single-Incident *Monell* Liability Requires A Clear Constitutional Violation.

1. For a municipality to be held liable under Section 1983 for the failure to train its employees, the municipality must make a "'deliberate' or 'conscious choice'" to ignore the "obvious" need for such training. *Canton*, 489 U.S. at 389-390. Anything short of that, and the municipality cannot be said to have *adopted as a policy* a course of action that is "likely to result in the violation of constitutional rights." *Id.* at 390. Put differently, failure-to-train liability presumes that local policymakers have "actual or constructive notice" of the training that they should have provided to their employees. *Id.* at 396-397 (O'Connor, J., concurring in part and dissenting in part). That bedrock prerequisite to municipal liability mirrors the "clearly established"

prerequisite to individual-officer liability: “in the light of pre-existing law,” the unlawfulness of the official’s conduct “must be apparent,” such that the law gives him a “clear warning” that he is entering a constitutional danger zone. *White v. Pauly*, 580 U.S. 73, 79-80 (2017) (per curiam) (citation omitted).

If it is not clear that a particular official action would violate the Constitution, then a municipality cannot be on notice that constitutional violations are inevitable. It is as simple as that. Otherwise, policymakers “can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights,” because they lack meaningful notice of the constitutional problems that might result. *Connick*, 563 U.S. at 62. As Chief Judge Sutton explained for the Sixth Circuit, “[t]he violated right in a deliberate-indifference case thus must be clearly established because a municipality cannot *deliberately* shirk a constitutional duty unless that duty is clear.” *Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 995 (2017).

The notice problem is especially acute with single-incident claims. To allege a policy of deliberately failing to train before a single violation had ever occurred, constitutional violations must have been inevitable and glaring. This Court has accordingly reserved single-incident liability for only the most “obvious” violations of a constitutional right. *Connick*, 563 U.S. at 64; see *Canton*, 489 U.S. at 396-397 (O’Connor, J., concurring in part and dissenting in part) (single-incident claims require a “fail[ure] to train . . . concerning a clear constitutional duty”). Indeed, this Court has *never* found a single-incident claim that meets that standard. A constitutional gray area is not the place to start.

2. The panel majority’s contrary reasoning is misguided. In the panel’s view, Bossier City should have anticipated—and prevented through additional, site-specific training, *see* App., *infra*, 48a-49a (Ho, J., concurring); *id.* at 51a-52a (Dennis, J., concurring in part and dissenting in part)—purported constitutional violations for which Hershey, the magistrate judge, the district court, and the panel itself could find no on-point precedent. As Judge Richman explained, “public property may change its character for purposes of First Amendment forum analysis based on temporary uses,” like the ticketed rock concert at the CenturyLink Center the day of Hershey’s visit. *Id.* at 71a. Different courts have come to different conclusions about whether the spaces surrounding various arenas are public forums (and, if so, what kind). *Id.* at 72a-73a; *see id.* at 103a-104a.² Simply put, this area of law is not susceptible to the “obvious” answers that this Court has held are a prerequisite to imposing single-incident liability. Sending officers into the field without specific training about pamphleteers’ First Amendment rights outside the CenturyLink Center under certain event conditions bears no resemblance to arming officers without training them on the proper use of deadly

² Compare *Pomicter v. Luzerne Cty. Convention Ctr. Auth.*, 939 F.3d 534, 540-541 (3d Cir. 2019) (concourse outside publicly owned arena was conceded to be a nonpublic forum); *Ball v. City of Lincoln*, 870 F.3d 722, 736 (8th Cir. 2017) (plaza area outside city-owned, privately operated arena was a nonpublic forum); *Calash v. City of Bridgeport*, 788 F.2d 80, 83-84 (2d Cir. 1986) (stadium was a nonpublic forum), with *Brister v. Faulkner*, 214 F.3d 675, 682-683 (5th Cir. 2000) (public-university property between arena and city sidewalk was a traditional public forum).

force. *Cf. Connick*, 563 U.S. at 69 63-64, 66-67; *Canton*, 489 U.S. at 390 n.10.

The panel oversimplified the constitutional issue here. It stated that the outdoor space “surrounding the [CenturyLink Center] is public property,” and “citizens are entitled to exercise their First Amendment rights there.” App., *infra*, 48a (Ho, J., concurring); *see id.* at 55a (Dennis, J., concurring) (identifying failure to train on “First Amendment rights on public property, including the area surrounding the Center”). But no one disputes the high-level principle that citizens can exercise First Amendment rights in public forums. The precise constitutional question is whether the specific grounds of a publicly owned, privately operated arena were a public forum during a private, ticketed event. In the absence of a clear constitutional answer to that question, Hershey cannot allege that Bossier City “disregarded a known or obvious” risk of constitutional injury. *Brown*, 520 U.S. at 410.

B. Single-Incident *Monell* Liability Requires A Complete Failure To Train On The Relevant Constitutional Right.

1. The decision below compounded its first error by allowing plaintiffs to reverse-engineer a “complete failure to train” claim. The panel majority held that a plaintiff can plead a single-incident claim by alleging that a municipality failed to provide training *on the specific circumstances giving rise to the claim*. That holding defies this Court’s instruction in *Connick* that, to rise to the level of deliberate indifference, the failure to train must pertain to the constitutional right, not “the specific scenario related to the violation in [the plaintiff’s] case.” 563 U.S. at 67.

To illustrate the appropriate level of generality, the Court in *Connick* invoked *Canton*'s use-of-force hypothetical. That hypothetical—arming officers with no training at all on the use of deadly force—was cast at an appropriate level of generality. Without *any* training on the subject, police officers are unlikely to be “familiar with the constitutional constraints on the use of deadly force.” *Connick*, 563 U.S. at 64. So failing to provide any such training would leave them “utter[ly] lack[ing] . . . an[y] ability to cope with constitutional situations” that they are virtually certain to encounter. *Id.* at 67. The Court held open the possibility of single-incident liability for that combustible combination of zero training and overwhelming risk. *Id.* at 64.

At the same time, *Connick* warned against the exact move that the panel majority made here. The plaintiff in *Connick* had asserted a failure to train prosecutors “to disclose blood evidence, a crime lab report, [and] physical or scientific evidence” under *Brady v. Maryland*, 373 U.S. 83 (1963). 563 U.S. at 62-63. The Court responded that “the prosecutors in Connick’s office were familiar with the general *Brady* rule.” *Id.* at 67. As a result, the plaintiff could only “assert that prosecutors were not trained about particular *Brady* evidence or the specific scenario related to the violation of this case.” *Ibid.* And that was plainly not enough. *Ibid.* If it were, a narrow exception would become an open invitation: “in virtually every instance where a person has had his or her constitutional rights violated by a [municipal] employee, a § 1983 plaintiff will be able to point to something the [employer] ‘could have done’ to prevent the unfortunate incident.” *Id.* at 67-68 (brackets altered and citation omitted).

2. Hershey’s allegations fall squarely into the class of claims that *Connick* rejected. Hershey never alleged that Bossier City police officers received zero training on free-speech rights and thus “utter[ly] lack[ed]” the “ability to cope” with First Amendment questions. *Connick*, 563 U.S. at 67; see App., *infra*, 136a-137a. Instead, he alleged that the officers had not been trained—or at least had not “adequate[ly]” been trained—about the constitutional status of the CenturyLink Center grounds. *Id.* at 136a. That is, Hershey alleged that Bossier City did not adequately train officers about how to apply a First Amendment forum analysis to a specific publicly owned and privately operated facility during a paid, ticketed private event. He did not allege that Bossier City officers “hav[e] no knowledge at all of the constitutional limits” of their actions. *Connick*, 563 U.S. at 67.

Both members of the panel majority overlooked the glaring problem with Hershey’s *Monell* claim. Judge Ho acknowledged that Hershey’s complaint alleges that Bossier City failed to train officers “regarding the *application* of the First Amendment” to the CenturyLink Center. App., *infra*, 48a (emphasis added). But he failed to explain how so narrow a framing could be squared with *Connick*. Judge Dennis, meanwhile, appears to have overread the complaint as alleging that “the City provided ‘no training whatsoever’ regarding the First Amendment’s application to speech in traditional public forums.” *Id.* at 53a (quoting *Garza*, 922 F.3d at 638). Neither Judge Ho nor Judge Dennis responded to Judge Richman’s observation in dissent that, under the majority’s approach, “plaintiffs would

be able to granulate allegations so finely that they arrive at a ‘complete failure to train’ as to the relevant conduct.” App., *infra*, 84a.

II. THE DECISION BELOW WARRANTS REVIEW.

The decision below creates a square split among the courts of appeals on whether a right must be clearly established for a plaintiff to state a single-incident *Monell* claim. It also deepens the confusion among the lower courts about the proper level of granularity at which a failure to train must be pleaded. Clarity on these issues is essential for local governments, which face significant resource constraints that will be severely tested by a flood of single-incident *Monell* claims. In plaintiffs’ hands, *Canton*’s extreme hypothetical has become the stuff of everyday constitutional litigation. It is time to bring much-needed clarity to this area of law.

A. The Decision Below Creates At Least A 3-1 Circuit Split.

1. On the first question presented, the decision below creates at least a 3-1 split in the courts of appeals over whether a plaintiff can plead a viable single-incident *Monell* claim in the absence of any clearly established constitutional violation. Every other court of appeals to consider the question—the Second, Sixth, and Eighth Circuits expressly, and the First, Seventh, and Eleventh Circuits indirectly—has rejected the illogical rule that the Fifth Circuit embraced here. And now that the Fifth Circuit has rejected rehearing en banc by a 10-7 vote, it cannot bring its precedent in line with the majority rule without this Court’s intervention.

The Second Circuit has long held that “municipal liability under a failure to train theory requires, in part, that municipal employees violate or are likely to violate a clearly established federal constitutional right.” *Townes v. City of New York*, 176 F.3d 138, 143 (1999); *see Young v. County of Fulton*, 160 F.3d 899, 903-904 (1998) (failure to train does not amount to deliberate indifference “unless the employees violated a clearly established federal constitutional right”). In *Young*, for example, the Second Circuit rejected a *Monell* claim alleging that the local department of social services failed to provide the plaintiff a hearing before temporarily suspending her child-visitation rights, because the right to such a hearing was not clearly established. *See* 160 F.3d at 901-904.

In a decision written by Chief Judge Colloton, the en banc Eighth Circuit followed suit. *Szabla v. City of Brooklyn Park*, 486 F.3d 385 (2007). It held that “a municipal policymaker cannot exhibit fault rising to the level of *deliberate* indifference to a constitutional right when that right has not yet been clearly established.” *Id.* at 393. A “lack of clarity in the law,” the court explained, “precludes a finding that the municipality had an unconstitutional policy at all, because its policymakers cannot properly be said to have exhibited a policy of *deliberate* indifference to constitutional rights that were not clearly established.” *Id.* at 394.

The Sixth Circuit adopted the same rule in a pair of decisions written by Chief Judge Sutton. *Arrington-Bey*, 858 F.3d at 994-995; *Hagans v. Franklin County Sheriff’s Office*, 695 F.3d 505, 511 (2012). The court held that “[t]he violated right in a deliberate-indifference case . . . must be clearly established because a municipality cannot *deliberately* shirk a constitutional duty

unless that duty is clear.” *Arrington-Bey*, 858 F.3d at 995. The Sixth Circuit thus requires “two elements: It must be obvious that the failure to train will lead to certain conduct, *and* it must be obvious (*i.e.*, clearly established) that the conduct will violate constitutional rights.” *Ibid.* The court explained that such a demanding rule “is the only way to thread the needle between permitted failure-to-train liability under *City of Canton* and impermissible *respondeat superior* liability under *Monell*.” *Ibid.* (agreeing with *Szabla*, 486 F.3d at 393).

The First, Seventh, and Eleventh Circuits, too, have acknowledged the connection between deliberate indifference and clear constitutional rights. The First Circuit has held that, because a prior decision concluded a constitutional right was not “‘clearly established,’” it “foreclosed” a single-incident claim. *Cosenza v. City of Worcester*, 120 F.4th 30, 40 (2024) (citation omitted). The Seventh Circuit has noted that “[a] municipality would . . . evince a deliberate indifference to the constitutional rights of its citizens by failing to train its employees ‘with respect to a clear constitutional duty implicated in recurrent situations that a particular employee is certain to face.’” *Robles v. City of Fort Wayne*, 113 F.3d 732, 735 (1997) (citation omitted). And the Eleventh Circuit has explained that a *Monell* claim requires showing that either (1) “the need for a particular type of training [is] obvious where [employees] face clear constitutional duties in recurrent situations” or (2) “a pattern of constitutional violations exists such that the municipality knows or should know that corrective measures are needed.” *Young v. City of Augusta*, 59 F.3d 1160, 1172 (1995). None of these descriptions is consistent with the decision below.

2. There is likewise confusion among the courts of appeals on the second question presented: whether a plaintiff can plead single-incident municipal liability without alleging a complete lack of training on the constitutional right in question. The courts of appeals have drawn different lessons in the wake of *Connick*. The primary divergence is whether, as in the decision below, a plaintiff can assert deficient training with respect to particular conduct, or whether a plaintiff must show a complete failure to train about a constitutional right.

The Eleventh Circuit stands on one end of the spectrum. It has held that, to state a single-incident claim, it is not enough merely to allege that “additional training would have been helpful in making difficult decisions.” *Knight ex rel. Kerr v. Miami-Dade County*, 856 F.3d 795, 820 (2017) (quoting *Connick*, 563 U.S. at 68). So that court has rejected single-incident claims where the municipality “provide[d] some training” on the constitutional right. *Lewis v. City of West Palm Beach*, 561 F.3d 1288, 1294 (2009). Channeling *Connick*, the Eleventh Circuit has also emphasized that Section 1983 “does not provide plaintiffs or courts with *carte blanche* to micromanage local governments.” *Keith v. DeKalb County*, 749 F.3d 1034, 1053 (2014) (quoting *Connick*, 563 U.S. at 68).

The Sixth Circuit has generally sided with the Eleventh, though in different terms. It focuses on the “likelihood that a particular situation will recur and the probability that an employee who lacks proper tools to respond to the situation will violate a citizen’s federal rights.” *Shadrick v. Hopkins County*, 805 F.3d 724, 739 (2017). Under that test, the Sixth Circuit has explained that an employee who “receives *some* training

on the constitutional subject matter . . . does not present the same ‘highly predictable’ constitutional danger” of an employee with *no* training. *Harris v. City of Saginaw*, 62 F.4th 1028, 1039 (2023) (quoting *Connick*, 563 U.S. at 64-67); see *Howell v. NaphCare, Inc.*, 67 F.4th 302, 320 (2023) (rejecting a single-incident claim where the defendant provided some training and the plaintiff “failed to show a genuine dispute of fact regarding whether the training was deficient”).

The Tenth Circuit, by contrast, expressly permits single-incident claims based on allegations of merely “deficient training” and has rejected the position that a single-incident “failure-to-train claim applies only to officers who have received no training at all.” *Valdez v. Macdonald*, 66 F.4th 796, 816-820 (2023). The Tenth Circuit therefore has permitted several single-incident claims based on allegations that municipalities failed to train employees to follow best practices when addressing particular situations. See, e.g., *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1319-1320 (2002) (best practices for jail medication procedures for people with obsessive-compulsive disorder); *Lance v. Morris*, 985 F.3d 787, 802-803 (2021) (best practices for determining the urgency of medical complaints in jails).

In the decision below, the Fifth Circuit joined the Tenth Circuit on the plaintiff-friendly side of the spectrum. It allowed a *Monell* claim based on the alleged failure to train police officers about “the application of the First Amendment” to a specific publicly owned, privately operated property. App., *infra*, 48a (Ho, J., concurring). As Judge Oldham observed in his en banc dissent, the panel waved through a single-incident claim alleging only that officers “were not trained in the specific situation at hand.” *Id.* at 30a.

This division on the second question presented, too, requires this Court's guidance. The Court should make clear that single-incident *Monell* claims require a complete failure to train about the relevant constitutional right, not a failure to train for the precise circumstances at hand.

B. The Questions Presented Are Important.

This petition presents the best opportunity in the last 15 years for this Court to bring clarity on the prerequisites to single-incident *Monell* claims. The Court's guidance to date largely consists of a hypothetical offered in *Canton* and reiterated in *Connick*. Meanwhile, costly single-incident suits are anything but hypothetical in the lower courts.

In the absence of further guidance from this Court, the lower courts have been left guessing how to apply *Canton*'s hypothetical to different factual situations. The questions presented in this petition allow the Court to establish the outer boundary of single-incident liability and put down clear rules for lower courts. These outer bounds are badly needed to provide certainty to the thousands of local governmental bodies across the country that must contend with lawsuits alleging that they failed to adequately train their employees to respect the rights of citizens.

Failing to rein in runaway *Monell* liability will have significant negative consequences for municipalities. Municipalities—especially small and mid-sized ones—typically operate on tight budgets and balance competing claims to scarce resources. Indeed, municipal debt has increased threefold over the past 25 years, hitting \$3.67 trillion in 2025. *State and Local Governments; Debt Securities and Loans*, Fed. Reserve Bank of

St. Louis (updated Mar. 19, 2026), <https://fred.stlouisfed.org/series/SLGSDODNS>. Even large cities are feeling the squeeze. Last year, “at least 20 of the nation’s 25 most populous cities have reported budget gaps for fiscal year 2026” and beyond. Josh Goodman, *Big Cities Face Deficits: Should States Worry?*, Pew (Aug. 5, 2025), <https://www.pew.org/en/research-and-analysis/articles/2025/08/05/big-cities-face-deficits-should-states-worry>.

Monell claims are a considerable drain on municipal resources. Between 2009 and 2025, the total cost of settling civil-rights claims against local law-enforcement agencies in the United States was just over \$4.1 billion. *Settlements*, Nat’l Police Funding Database (last visited May 12, 2026), <https://policefundingdatabase.org/explore-the-database/settlements/>. In some circumstances, even a single successful *Monell* claim can disrupt a budget and require competing cuts. The average jury award against a municipality in Section 1983 cases is around \$2 million. Larry K. Gaines & Victor E. Kappeler, *Policing in America* 346 (9th ed. 2021). In small communities with tight budgets, that amount of money could affect the municipality’s ability to provide essential services. And in larger cities with larger municipal workforces, the cost of multiple claims can add up quickly.

The cost of defending meritless claims in litigation, especially past the motion-to-dismiss stage, further increases the burden on local governments. This Court’s instruction that *Monell* claims must meet a “stringent standard of fault,” *Brown*, 520 U.S. at 410, is supposed to provide a bulwark against such burdens. But the decision below undermines this critical protection from excessive liability. As Judge Oldham warned in his

en banc dissent, the predictable consequence of the panel decision is “that lawsuits will proliferate, discovery costs will soar, and municipalities will be forced to re-allocate precious time and resources” to defending claims that will be trivially easy to bring. App., *infra*, 30a-31a. This prediction has already started to come true. In the few months since the decision was handed down, litigants in the Fifth Circuit have cited it in pressing *Monell* claims.³

An expansion of single-incident *Monell* claims will have serious federalism implications as well. In the world the panel majority embraces, “‘failure to train’ . . . become[s] a talismanic incantation producing municipal liability in virtually every instance where a person has had his or her constitutional rights violated by a [municipal] employee.” *Connick*, 563 U.S. at 74 (Scalia, J., concurring) (brackets, citation, and internal quotation marks omitted). Such “*de facto respondeat superior* liability on municipalities” would invite “an endless exercise of second-guessing municipal employee-training programs.” *Canton*, 489 U.S. at 392. This Court has recognized that federal courts are “ill suited to undertake” that kind of supervision. *Ibid*.

That is particularly true in municipal jails and other areas where municipalities must make sensitive policy choices. Training decisions in those contexts are “intricately bound up with state laws, regulations, and procedures,” *Preiser v. Rodriguez*, 411 U.S. 475, 491-492 (1973)—yet those decisions are most likely to be

³ See, e.g., Appellant’s Br., *Red Rover Grp., LLC v. City of Bossier City*, No. 25-30639 (5th Cir. Mar. 6, 2026), 2026 WL 736753; Appellant’s Reply Br., *Washington v. City of Bossier*, No. 25-30533 (5th Cir. Feb. 17, 2026).

second-guessed after the decision below, App., *infra*, 31a (Oldham, J., dissenting from denial of rehearing en banc).

Lower courts are grasping for more guidance in this area, and municipalities deserve more certainty. Both need this Court's review.

III. THIS CASE IS AN EXCELLENT VEHICLE.

This case is an excellent vehicle for the Court to address both questions presented. The issues in this case were fully considered by the Fifth Circuit and crystallized in a 2-1 decision of the panel and a 10-7 split of the en banc court. Multiple courts of appeals have weighed in on both questions, and these issues have had 15 years of percolation since *Connick*. The fault lines are clear.

On the first question presented, the Fifth Circuit's holding is unambiguous: the court of appeals granted qualified immunity to the defendant Bossier City police officers because the alleged constitutional violation was not clearly established, yet permitted a single-incident *Monell* claim based on the same alleged violation. App., *infra*, 38a-39a. This case presents a clean, straightforward illustration of the tension between those two conclusions. It concerns a quintessential gray area in First Amendment jurisprudence—the speech rights of individuals on property that has a partially public, partially private character. The panel majority decided that the First Amendment's application to the CenturyLink Center grounds was sufficiently murky to grant qualified immunity, yet faulted the City for failing to foresee the alleged violation of Hershey's rights and train officers appropriately. As the well-reasoned opinions by Chief Judge Sutton and Chief

Judge Colloton for the Sixth and Eighth Circuits demonstrate, the Fifth Circuit’s approach makes no sense.

On the second question presented, despite some apparent confusion in Judge Dennis’s opinion (though not in Judge Ho’s), the complaint is unambiguous. Its failure-to-train allegations are gerrymandered to the precise facts. As Judge Richman pointed out in her dissent, *see App., infra*, 88a-89a, Hershey’s complaint contains no allegations about a complete lack of training on the First Amendment, free speech, or even public forums generally. Rather, the complaint alleges only that Bossier City did not train its officers “that *the [CenturyLink Center] and the park surrounding it* are public property and, therefore, the citizens using that property are entitled [to] their constitutional rights guaranteed by the First Amendment.” *Id.* at 136a (emphasis added). That tailored allegation perfectly tees up the question whether a plaintiff raising a single-incident *Monell* claim must allege a complete failure to train on the relevant constitutional right, or may allege only a failure to train on the Constitution’s application to case-specific facts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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